The general principles of European Union law - a source of inspiration for the development of a modern administrative law in the Republic of Moldova

Principiile generale ale dreptului Uniunii Europene – sursă de inspirație pentru dezvoltarea dreptului administrativ modern în Republica Moldova

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SUMMARY

To attain the quality of public administration that Moldova needs in the 21st century, the upcoming modernisation of public administration must include the development of a modern, sophisticated adminis¬trative law. The general principles of European Union law, unwritten principles reflecting the common European legal heritage that have been worked out and elaborated in the jurisprudence of the European Court of Justice, present a valuable source of inspiration to meet this challenge. Most principles serve to protect human rights or to implement the rule of law in the Union. The latter group includes the principles of legality, legal certainty and clarity, the protection of legitimate expectations and a couple of specific principles for a fair administrative procedure (in particular the right to be heard, the right of access to one's file and the obli¬gation of the authority to state reasons). Of particular interest are those principles that focus on ensuring the effectiveness, the „effet utile" of the law - a central concern in a system based on the rule of law.

Keywords: *general principles of European Union law, common European legal heritage, European administrative law, rule of law, principle of good administration, rights of defence, effectiveness („effet utile") of the law, principle of legality and protection of legitimate expectations.*

REZUMAT

Pentru a ajunge la calitatea administrației publice de care Republica Moldova are nevoie în secolul al XXI-lea, viitoarea modernizare a administrației publice trebuie să includă elaborarea unei legi administrative moderne, sofisticate. Principiile generale ale dreptului Uniunii Europene, principii nescrise care reflectă patrimoniul juridic european comun, alcătuite și elaborate de Curtea Europeană de Justiție în jurisprudență, reprezintă o sursă valoroasă de inspirație pentru a face față acestei provocări. Cele mai multe principii servesc pentru a proteja drepturile omului sau pentru a pune în aplicare conceptul statul de drept în cadrul Uniunii. Cel din urmă grup include principiile legalității, securității și clarității juridice, protecției încrederii legitime și unele

principii specifice pentru o procedură administrativă echitabilă (în special, dreptul de a fi ascultat, dreptul de acces la dosarul personal şi obligativitatea autorității de a-şi motiva deciziile). Un interes deosebit prezintă principiile care se concentrează pe asigurarea eficienței legii („effet utile") care este o preocupare fundamentală într-un sistem bazat pe conceptul statul de drept.

Cuvinte-cheie: *principii generale ale dreptului Uniunii Europene, patrimoniul juridic european comun, drept administrativ european, stat de drept, principiul bunei administrări, dreptul la apărare, eficiența („effet utile") legii, principiul legalității și protecției încrederii legitime.*

I. Introduction

1. The need to develop a modern administrative law for the Republic of Moldova

As any country, which wants to progress and to unfold its potential, the Republic of Moldova needs to develop a sophisticated, modern administrative law. Administrative law is the most important instrument to ensure that administrative action serves the public interest (not private interests), that it achieves its aims but respects the fundamental values of the country, that it is *efficient but considerate*, sufficient but not excessive, reliable and predictable but flexible where necessary, far-sighted but dynamic, well-thought-out and well-balanced. The modernisation of public administration is one of the biggest challenges of Moldova. The modernisation of administrative law must be an essential part of it. Other topics such as administrative-territorial reform and decentralisation may appear more pressing but progress in these fields alone will not be enough to attain the quality of public administration that Moldova needs in the 21st century.

The need to develop a modern administrative law is also caused by the commitment of the Republic of Moldova to the rule of law. „Republica Moldova este un *stat de drept*...". This statement in art. 1(3) of the Constitution of 1994 is not a political proclamation but binding constitutional law. It applies to all sectors of the State including public administration. The *key prerequisite for implementing the rule of law* in public administration is a sophisticated, modern administrative law. Most elements of the general administrative law primarily serve this function. Furthermore, they serve to *protect the rights of the citizen*, in particular the fundamental rights under the Constitution and the European Convention on Human Rights and other human rights treaties. Without a developed administrative law these rights cannot be ensured effectively in practice.

2. The ways to develop administrative law

Basically, there are two ways to develop a modern administrative law. For the individual fields of public administration comprehensive specialised legislation is necessary. Many countries also choose this way for the development of their general administrative law. Often an Administrative Procedure Act constitutes the core of it. It contains detailed provisions on general aspects and the principles guiding the administrative procedure, on the duties of the authorities and the rights of the citizens, on administrative acts and contracts and on special types of procedure. Such a law contributes to a better-structured administrative procedure, a more predictable administrative action and a better procedural protection of the citizen.[1] In the Republic of Moldova an international project led to the presentation of a draft Administrative Procedure Code in 2013[2] but the law was not adopted.

In some countries the legislators have not yet chosen this way but confined themselves to regulate some details in some specialised laws. In these countries it is the task of the courts to carve out in their jurispru-

dence the numerous general rules and principles that must be respected by a public administration that is committed to the rule of law. If the courts want to fulfil their role as judicial power in a free and democratic state based on the rule of law they cannot confine themselves to the wording of the statutes but must fill the gaps in the law by the way of *judicial further development of law*. They must ensure that the concept of the „stat de drept" is actually implemented in practice. Otherwise, in the Republic of Moldova, they would violate art. 1(3) of the Constitution of 1994. If necessary, the courts must compensate the flaws in the law by judicial solutions, respecting, however, the separation of powers and the limits of judicial power and jurisprudence.

3. Sources of inspiration for the development of a modern administrative law

For both ways to develop administrative law, comprehensive inspiration is needed. In no country the legislator or the courts can do it just by themselves. Constitutional principles and fundamental rights set important parameters but this alone is not enough and often their interpretation needs inspiration too. In Europe often the legislation in other countries (such as, for example, Germany) or the highly developed jurisprudence in other countries (such as, for example, France or Germany) has been used as a source of inspiration. As a consequence, in the decades following the break-down of the totalitarian regimes in East Europe *comparison of laws* has become an important factor for the development of administrative law, and numerous young lawyers have done post-graduate studies and research in West European countries. Furthermore, development cooperation partners have provided advice. However, caution is advised when they table the idea of *„good governance"*: This is a concept of political science, not law, which first needs to be translated into appropriate legal terms, rules and principles.

II. The legal concept of general principles of law

The general principles of European Union law present one of the most interesting sources of inspiration for the development of a modern administrative law. In the past, the European Communities [now: the European Union] were confronted too with the challenge that they needed to develop a legal system complying with human rights and the rule of law but regulations on these issues were missing. The European organisation of integration did not even have a fundamental rights catalogue (the Charter of Fundamental Rights only was proclaimed in 2000 as a political resolution and became binding in 2009). So the European Court of Justice had to develop considerable parts of the European law by the way of judicial further development of law,[3] including those elements guaranteeing the respect for human rights and ensuring that the European law is actually executed, applied and enforced in compliance with the rule of law. For this demanding task the Court used the instrument of the so-called „general principles of law", a legal concept that finds its origin and is highly developed in the French administrative law doctrine.[4]

The general principles of law are principles with a secondary, serving function in the legal order whose existence is *a priori presupposed* in any legal order that is based on certain fundamental values and ideas, such as - in Europe - democracy, rule of law and the respect for human rights. These elements of law *must* exist in such a legal order even if they are not codified. In a different legal order based on different fundamental values and ideas (e.g. a communist or islamist state) the concept could still be applied but the presupposed elements of law would be different.

The general principles of law are *not made but „discovered" („detected") by the judge*, since under the separation of powers the judge is not entitled to make genuine new law but only to „develop" (refine, enhance, advance) the already existing law and in particular legal doctrine. Theoretically these principles existed before but only were noticed when a specific context made the Court refer to them for the first time.

With regard to this approach it is evident that there must be a source of inspiration for the identification of the general principles of law. The European Court of Justice orientates itself by two main sources of inspiration: the *constitutional traditions common to the member states*[5], in particular those connected to the rule of law and fundamental rights, and the *European Convention on Human Rights* and *other international treaties* for the protection of human rights and the implementation of the rule of law.[6] These sources of inspiration played an important role in the development of a jurisprudential fundamental rights regime of the European Communities in the seventies and eighties and were explicitly recognized in 1992 in the Treaty of Maastricht (see art. F(2), today art. 6(3) of the Treaty on European Union [= EU Treaty]). Furthermore, the basic attitude that in a system based on the rule of law the law must be interpreted, applied and developed in such a way that it is *effective in practice* plays an important role.

The finding of the general principles of law is an autonomous, not a schematic process. The European Court of Justice takes into account the particularities of European Union law. Where necessary, the legal concept in question will be adapted.[7] Concerning the common constitutional traditions the Court does not confine itself to an empirical inventory. Where there are divergences, for example lower or higher standards in different member states, the Court choses the most appropriate solution[8] in the way of an *evaluative comparison of laws* [wertende Rechtsvergleichung]. Often the chosen standards are not the highest that can be found in the member states but higher than the average. In this process the judges are supported by the Advocate-Generals (cf. Art. 252 of the Treaty on the Functioning of the European Union [= FEU Treaty]) who submit sophisticated opinions in important cases that often have a strong influence on the jurisprudence and provide continuity and consistency. Furthermore, the Court is supported by the critical analysis and discussion of its judgements in legal science and by the courts in the member states.

III. The general principles of European Union law as expression of the common European legal heritage

When finding and developing general principles of Union law that are inspired by the common constitutional traditions and human rights commitments of the member states, the European Court of Justice *concretises elements of the common European legal heritage for the legal order of the Union*. In the field of public law there is a common stock of important legal principles that are common to all EU member states and other free and democratic states in Europe that are based on the rule of law. It has developed in a long history but in particular after the end of the Second World War and after the end of the totalitarian rule in East Europe with the support of the Council of Europe and its Venice Commission[9] and of legal science. The frequently used terms *ius commune europaeum*[10] or *ius publicum europaeum*[11] are not entirely correct since there is still not one common law but a plurality of laws with common values and similar principles in Europe. Nevertheless, the terms may be used because they are illustrative. However, we must be aware of

the fact that this is *not a pan-European ius commune* since some important European states, such as Russia, Belarus and Turkey, even if they are members of the Council of Europe and have ratified the European Convention on Human Rights, actually do not share many of these principles and in particular not the fundamental values behind.[12] In the advancing 21st century, the European and Eurasian values are still different and not even approaching. Taking inspiration from the general principles of European Union law for the development of a modern Moldovan administrative law means moving into the European, not Eurasian direction.

IV. The most important general principles of European Union law

1. Fundamental rights as general principles of European Union law

Many general principles are linked to the need of an effective protection of human rights at the level of the European organisation of integration. In the seventies, after coming under pressure from the Italian Corte costituzionale[13] and the German Bundesverfassungsgericht[14], which threatened to intervene, the European Court of Justice began to focus on the development of an own fundamental rights regime for the European Communities. It started in 1969 with the decision *Stauder*[15], where the Court declared for the first time fundamental rights as general principles of Community law [now: Union law]. In 1974 the Court referred in the decision *Nold*[16] to the common constitutional traditions of the member states and in 1979 in the decision *Hauer*[17] also to the European Convention on Human Rights as the basis for its own fundamental rights jurisprudence. Step by step, it introduced numerous fundamental rights as general principles of law into the European legal order, such as human dignity,[18], human integrity,[19] the right to respect for family life,[20] the freedom of religion,[21] the freedom of expression,[22] the freedom to publish,[23] the right to property,[24] including intellectual property,[25] the freedom to pursue a trade or profession,[26] the freedom of association,[27] the right to take collective action,[28] the general freedom to pursue any lawful activity,[29] the right to inviolability of the home,[30] the right to respect for private life (including the protection of personal data[31] and the protection of medical confidentiality[32]), the right to respect for correspondence,[33] the general principle of equality,[34] the principles of non-discrimination on grounds of sex[35] and age[36], and other fundamental rights[37]. The Court even developed a *fundamental rights doctrine*, concerning in particular the fundamental rights limits, the need of a legal basis for any interference with fundamental rights,[38] the *principle of proportionality* as a limit to interferences (not only in the field of fundamental rights) [39] and the absolute protection of the essence of the rights.[40] This purely jurisprudential fundamental rights regime showed some deficiencies and was finally replaced by the Charter of Fundamental Rights as the primary source of human rights protection in the European Union. However, it also showed the potential of the legal institution of the general principles of law to fill gaps in the legal system. For this reason, the jurisprudential rights were not given up with the reform of Lisbon but maintained in addition to those of the Charter as a secondary, auxiliary source of human rights protection (cf. art. 6(3) EU Treaty).

2. General principles implementing the rule of law

a) Many general principles serve to implement the rule of law at the level of the Union. The most important is of course the

principle of legality. It requires that the activities of the public institutions must be based on the law[41] and comply with the law[42]. However, since the concept of the rule of law is more complex than a mere commitment to legality, there are many more principles. Some of them also represent fundamental rights.

b) Some *principles* are *related to justice*, such as the right to effective legal protection[43] and the right to a fair trial[44] with their many aspects. They are now codified in Title VI (art. 47 ff.) of the Charter of Fundamental Rights. Some classical principles of criminal justice, namely the presumption of innocence, „nulla poena sine lege", „ne bis in idem" and „nemo tenetur se ipsum accusare", have also been confirmed for the administrative procedure.[45] They apply whenever the administrative procedure may lead to penalties or other sanctions.

c) The principle of legality is complemented by the *principle of legal certainty*, which plays an important role in the jurisprudence of the European Court of Justice.[46] This principle does not only limit any retroactive effect[47] but also requires the *legal clarity* of legal norms: They must be clear and precise, and aim to ensure that situations and legal relationships governed by Union law remain foreseeable.[48] The citizens must be able to ascertain unequivocally what their rights and obligations are and to take steps accordingly.[49] This imperative must be observed even more strictly in the case of rules liable to have financial consequences.[50] This does, however, not exclude the use of indefinite (but definable) legal concepts in legal norms, which is inevitable in a modern system based on the rule of law.[51] Legal certainty does not require that everything is laid down explicitly in detail in the text of the law.

The principle of legal certainty is often mentioned together with the principle of the *protection of legitimate expectations*.[52] That principle protects the citizen's interest that his expectations are fulfilled, if an acting of a public authority (e.g. a general regulation, a beneficial administrative decision or a precise assurance) has engendered justifiable reliance, this reliance has manifested in an acting of the citizen and the affected interest of the citizen prevails when balanced with the interest of the Union. The principle limits in particular the right of the authorities to revoke administrative decisions. There is no justifiable reliance if the citizen knew that the acting of the authority was contrary to the law (e.g. because it was based on the incorrect facts he had given or if the authority promised not to apply or enforce the law) or if a cautious and prudent citizen could have foreseen the later measures in the given situation. [53] A classical example for the protection of legitimate expectations is the *respect for acquired rights*.[54]

d) The European Court of Justice has introduced a number of *principles of a fair administrative procedure*. It has grouped them under the umbrella concept[55] of a „principle of good [proper] administration"[56]. Some of them are now codified, as far as the administrative action of the Union is concerned, as a *„right to good administration"* in art. 41 of the Charter of Fundamental Rights.[57]

According to these principles the competent authority has the *duty to examine carefully and impartially* all the relevant aspects of the individual case.[58] This implies the task to establish ex officio the facts of the case. All this must be done within a *reasonable time*.[59] The decision must be taken without any arbitrary action, unjustified preferential treatment or conflict of interest, and the concerned citizen is entitled to know the identity of the persons involved.[60]

Certain *„rights of defence"*[61] shall enable the citizen to ensure that his rights are respected. The most important is the *right*

to be heard before any individual measure adversely affecting the citizen is taken.[62] It does not only apply if the proceedings may lead to penalties or other sanctions[63] but also if they may provide evidence for unlawful activities for which the citizen is liable.[64] He must be given the opportunity to make his point of view known, including his view on the evidence on which the decision may be based. Therefore, if necessary he must be informed clearly and in good time of the objections raised against him. [65] He must also be informed about the authority's response to complaints or representations, the outcome of procedures and of decisions made, and about all other matters necessary for the defence.[66] Moreover, he must be given sufficient time to prepare his defence.[67] Where this will jeopardise the effectiveness of measures for the protection of very important public interests (such as public health, combating terrorism etc.), the measure may be taken without a prior hearing but the reasons and the evidence must be notified with or as soon as possible after its adoption.[68]

A violation of the right to be heard will not result in the annulment of the decision if it is not established that without this irregularity the outcome of the proceedings might have been different.[69] Furthermore, the European Court of Justice allows to remedy the irregularity during the proceedings before the Court.[70]

The *right of access to one's file* serves to ensure the effective exercise of the right to be heard.[71] The citizen must be granted access to the documents which may be used as evidence in a decision affecting him. However, this right is limited by the legitimate interests of confidentiality and the *professional and business secrecy*, which is recognised as a general principle of law too[72]. A company who has submitted a complaint concerning a competitor may not be given access to documents containing the competitor's business secrets.[73] Often, in the individual case a thorough balancing is necessary and later the administrative decision may not be based on the information which has not been disclosed and to which the citizen could not respond.[74]

The authority must *state the reasons* for its decision. This is necessary to allow the courts an effective judicial review but also to allow the citizen, whose rights might be violated or not, to decide with full knowledge of the relevant facts, whether there is any point in applying to the courts. For the decisions of the institutions of the Union the obligation is explicitly laid down in art. 296 sub-sect. 2 FEU Treaty. For the administrative decisions of the member states it applies too, as a general principle of law, when the member states are executing Union law or interfering with the economic fundamental freedoms. While art. 296 FEU Treaty requires a statement of reasons in the decision itself, the general principle, as stated by the European Court of Justice, also allows a subsequent communication made at the request of the citizen. [75]

The rights of defence also include the *protection of the confidentiality of the correspondence* between the citizen and his lawyer.[76]

3. In particular: General principles ensuring the „effet utile" of the law

Some general principles serve to ensure the effectiveness of the law. In the European Union this aspect is particularly important because there is by nature a high risk that in some member states some norms of Union law, though binding in theory, are actually not totally implemented, applied and enforced in practice or are applied in a way that renders them ineffective. The member states are often tempted to be „negligent" because their „negligence" will engender a competitive advantage for their domestic

industries. Such distortions can easily compromise the acceptance of the whole integration process. Therefore, the European Court of Justice has adopted the general approach to interpret - and further develop - the European law in a way that provides for its effectiveness in practice, the so-called „effet utile". [77]

In the decision *vin de table* of 1990[78] the European Court of Justice reminded that the authorities in the member states (here: Germany) *must*, if necessary, *take coercive measures to enforce the Community law* [now: Union law]. If the law provides for a duty of the citizen (here: the duty of wineries to deliver a certain quantity of their wine for compulsory distillation), the authorities cannot confine themselves in decreeing the duty in an administrative decision but must take all measures necessary to ensure compliance. They must in particular prevent that the suspensive effect of legal remedies allows the citizen to create a situation in which his duty cannot be fulfilled anymore (here: to sell the wine before the decision about the remedies is taken). In the given case, the judgement was based on a special provision in a Community regulation. However, it also expresses a concretisation of a general principle of law: The principle of legality requires that the law is effectively implemented - not just on paper but also in real life. This does not only apply in favour of the citizen. Coercive measures against illegally acting or non-complying citizens are an essential element of the rule of law too.

In the decision *Factortame* of 1990[79], pointing out to the necessity of „full effectiveness of Community law", the European Court of Justice stated the obligation of the courts of the member states to grant *interim relief to enforce the Community law* - even if the national law does not allow it. The Court referred to the duties of cooperation of the member states under art. 5 EEC Treaty (today: art. 4(3) EU Treaty) but the obligation also derives from the right to effective legal protection, an early recognized fundamental right and general principle of law (see above, IV.2.c). In a decision of 1991 the Court stated that under certain conditions interim relief may also be granted *against* the implementation of Community law if there are serious doubts as to its validity. [80]

The most spectacular jurisprudential innovation was the introduction of *state liability pursuant to Community law*. It is a classical principle of the rule of law that the state must pay compensation to the citizen for the damage inflicted by the unlawful acts of its institutions or servants. This also applies if the national authorities violate (e.g. do not implement or execute properly) legal norms of the European Union. Even in a system based on the rule of law violations of the law cannot be totally eliminated but the responsible organisation must be held accountable. While the non-contractual liability of the Union is anchored in art. 340 FEU Treaty, there is no clause on the liability of the member states. The European Court of Justice filled that gap by developing, step by step, a general[81] principle of state liability. It started in 1991 with the famous decision *Francovich* (state liability for non-implementation of directives)[82] and continued with the decisions *British Telecommunication* (state liability for incorrect implementation of directives),[83] *Brasserie du Pêcheur/Factortame* (state liability for violation of directly applicable Union law, elaboration of a detailed state liability doctrine),[84] *Hedley Lomas* (state liability for violations by administrative practice),[85] *Köbler* (state liability for violations by judgements of the national supreme court)[86] and numerous other decisions. The member states keep their own national state liability law but in the cases where Union law has been violated it must comply with the European standards. Meanwhile an extensive new field of law has developed.[87]

Some elements of the European doctrine (e.g. state liability for unlawful legislative acts)[88] have triggered discussions in the member states about the need to modernise the national state liability law.

In the decision *Deutscher Milchkontor* of 1983[89] the European Court of Justice accepted that in the absence of relevant Community law the national authorities apply the European regulations in accordance with the procedural and substantive rules of their own national law. This even applies to the recovery of amounts unduly paid under Community law. The Court also accepted that national provisions excluding the recovery with regard to such considerations as protection of legitimate expectations, loss of unjustified enrichment, passing of time-limits, awareness of the authorities etc. may be applied. However, their application must not affect the scope and effectiveness of the European law, in particular not make it virtually impossible to implement it. The interests of the Community - that means the public interest that under the rule of law the Community law is applied correctly and effectively in all member states - must be taken „fully into account".

In the decision *Alcan* of 1997[90] the Court illustrated what this may mean: In the case of state aids (subsidies) granted to domestic enterprises in breach of the obligation to notify the European Commission (see now art. 108(3) FEU Treaty) there cannot be any protection of legitimate expectations. If the Commission orders the recovery of the aid the national authorities must give effect without discretion - even if the national law excludes the recovery in the given case. This strict approach prevents the authorities from acting illegally in favour of their domestic enterprises, even without their knowledge, in order to achieve an illegitimate competitive advantage for the enterprise and for their region. If a company wants to be sure that it is entitled to keep the subsidiary it may need to contact the Commission and make certain that everything is alright.

This approach may be a guideline for the development of a modern national administrative law too: The principle of legality is the core element of the rule of law and must always be the focus of attention. Other concretisations of the rule of law, such as procedural guarantees, the protection of legitimate expectations etc. may complement it but must not compromise it.

V. Conclusion

This overview demonstrates that the law of the European Union contains an abundance of general principles of law that apply in the field of public administration and may be used - inside and outside the European Union - as a source of inspiration for the development of the national administrative law. They do not cover all but many aspects of a modern administrative law (some elements, such as transparency and access to documents, are regulated in the Treaties or secondary law). All general principles have been elaborated in a number of decisions of the European Court of Justice under the support - and sometimes criticism - of the scholars. They have been analysed, assessed and discussed in numerous publications of scholars from different European countries. In particular this combination of a genuine European jurisprudence and a broad European scholarly debate may make them a valuable quarry of ideas for those who want to develop a modern, sophisticated administrative law for the Republic of Moldova referring to the common European legal heritage and based on European values.

NOTES

[1] See for the example of Germany Schmitz, Thomas: Implementing the rule of law in public administration by an administrative procedure act - the example of Germany, in: Oleg Balan et. al. (editors), Teoria şi practica administrării publice.Materiale ale Conferinţei ştiinţifico-practice cu participare internaţională, 20 mai 2016, Chişinău, 2016, p. 17 ff.

[2] See the presentation of the Proeictul Codului de procedură administrativă al Republicii Moldova at the platform particip.gov.md in August 2013, www.particip.gov.md/proiectview.php?l=ro&idd=1057.

[3] See on the general principles of law as examples of judicial further development of law Martin Nettesheim, in: Thomas Oppermann; Dieter Classen; Martin Nettesheim, Europarecht, 7th edition 2016, § 9 no. 31 ff.

[4] See on the legal concept of general principles of law in general Laura Pineschi, (editor): General Principles of Law - The Role of the Judiciary, 2015; Maillot, Jean-Marc: La théorie administraviste des principes généraux du droit. Continuité et modernité, 2003; Pierre Marchal, : Principes généraux du droit, 2014.

[5] Cf. European Court of Justice [= ECJ], case 4/73, Nold [1974], no. 13.

[6] Cf. ECJ, case 44/79, Hauer [1979], no. 15.

[7] For example, with regard to the different roles and competences of the institutions of the European Union, there cannot be a principle of "separation of powers" as in the member states. However, the basic idea behind this concept is widely implemented by the protection of the "institutional balance" intended by the Treaties, cf. ECJ, case 138/79, Roquette Frères/Isoglucose [1980], no. 33 ff.; ECJ, case C-70/88, Tschernobyl I [1990], no. 16 ff.

[8] Cf. Rob Widdershoven, in: René Seerden (editor): Administrative Law of the European Union, its Member States and the United States, 3rd edition 2012, p. 275: "wise compromise between the variety of national principles".

[9] European Commission for Democracy through Law [Venice Commission], www.venice.coe.int. See in particular the many reports and studies published by the Commission on its website.

[10] Cf. Luigi Lacchè Europa una et diversa. A proposito di ius commune europaeum e tradizioni costituzionali comuni, in: Forum historiae iuris 2003, www.forhistiur.de/2003-07-lacche. See also the publication series "Ius Com¬mune Europaeum" published by the Ius Commune Research School of Maastricht University and the Uni¬ver¬sities of Leuven, Utrecht and Amsterdam, www.iuscommune.eu/publicaties.aspx. This term is also used to describe similiarities and common foundations in the field of civil law in Europe.

[11] Cf. Hartmut Bauer; Michael Huber, Peter; Zygmunt Niewiadomski, : Ius Publicum Europaeum, 2002 (conference proceedings); von Bogdandy, Armin; Huber,Peter Michael and others (editors): Ius Publicum Europaeum, vol. I - VI, 2007 - 2016; von Bogdandy, Armin; Hinghofer-Szalkay, Stephan: Das etwas unheimliche Ius Publicum Europaeum. Begriffsgeschichtliche Analysen im Spannungsfeld von europäischem Rechtsraum, droit public de l'Europe und Carl Schmitt, in: Heidelberg Journal of International Law/Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, vol. 73 (2013), p. 209 ff., www.zaoerv.de/73_2013/73_2013_2_a_209_248.pdf.

[12] See also, with a different view, Ulrich Stelkens, in: Jean-Bernard Auby; Jacqueline Dutheil de la Rochère (editors): Traité de droit administratif européen, 2nd edition 2014, p. 713 ff. Ulrich Stelkens refers to the role of the Council of Europe and discusses the question

of "principes généraux paneuropéens du droit administratif dans l'Europe des 49" [pan-european general principles of administrative law in the Europe of 49]. It is not so sure if this desiderat will ever become reality.

[13] See the Frontini Franco Judgement of the Corte costituzionale [Constitutional Court], Judgement no. 183/73 of 18.12.1973, www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=1973&numero=183.

[14] See the "Solange I" Decision of the Bundesverfassungsgericht [Federal Constitutional Court], Decision of 29.05.1974, 2 BvL 52/71, BVerfGE 37, 271, 277 ff. (Decisions of the Federal Constitutional Court, vol. 37, p. 271 ff., see in particular p. 277 ff.), English translation at http://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=588.

[15] ECJ, case 29/69, Stauder [1969], no. 7. This approach was confirmed in ECJ, case 11/70, Internationale Handelsgesellschaft [1970], no. 3 f.

[16] ECJ, case 4/73, Nold [1974], no. 12 ff.

[17] ECJ, case 44/79, Hauer [1979], no. 14 ff.

[18] Cf. ECJ, case C-377/98, Directive on biopatents [2001], no. 6, 69 ff.; ECJ, case C-36/02, Omega [2004].

[19] Cf. ECJ, case C-377/98, Directive on biopatents [2001], no. 70.

[20] ECJ, case C-60/00, Carpenter [2002], no. 42 ff.

[21] ECJ, case 130/75, Prais [1976], no. 10.

[22] ECJ, case C-368/95, Vereinigte Familiapress [1997], no. 25.

[23] ECJ, Joined cases 43/82 and 63/82, VBVB and VBBB [1984], no. 34.

[24] ECJ, case 44/79, Hauer [1979], no. 4.

[25] Cf. ECJ, case 200/96, Metronome Musik [1998], no. 21.

[26] ECJ, case 44/79, Hauer [1979], no. 4.

[27] ECJ, case C-415/93, Bosman [1995], no. 79.

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[31] ECJ, case C-101/01, Lindqvist [2003], no. 81, 88 ff.

[32] ECJ, case C-62/90, Commission v. Germany [1992], no. 23.

[33] ECJ, case 136/79, National Panasonic [1980], no. 17.

[34] ECJ, case 130/75, Prais [1976], no. 13.

[35] ECJ, case 149/77, Defrenne [1978], no. 27.

[36] ECJ, case 144/04, Mangold [2005], no. 75.

[37] See the extensive overview by Cordula Stumpf, in: Jürgen Schwarze (editor), EU-Kommentar, 2nd edition 2009, art. 6 EUV [= EU Treaty), no. 16 ff.

[38] Cf. ECJ, joint cases 46/87, 227/88, Hoechst [1989], no. 19.

[39] The principle of proportionality has not only a prominent role in the fundamental rights doctrine and in the doctrine of the economic fundamental freedoms of the citizens of the Union but also represents a core element of the concept of the rule of law and thus applies as a general principle of law in the whole legal order of the European Union, cf. Cordula Stumpf (note 37), art. 6 EUV [= FEU Treaty], no. 11 with further references.

[40] See already ECJ, case 44/79, Hauer [1979], no. 6 ff.

[41] See above (note 38).

[42] See already ECJ, joint cases 42 and 49/59, SNUPAT [1961], European Court Reports 1961, p. 53 (87).

[43] ECJ, case 222/84, Johnston [1986], no. 18 f.; case 222/86, Heylens [1987], no. 14.

[44] ECJ, case 98/79, Pecastaing [1980], no. 21.

[45] Cf. ECJ, case C-199/92 P, Hüls [1999], no. 149 f. (for the presumption of innocence); case 63/83, Kirk, no. 21 ff. and case C-266/06, Degussa [2008], no. 38 (for the principle "nulla poena sine lege"); joint cases 18 and 35/65, Gutmann [1967], European Court Reports 1967, p. 61, 65 (for the principle "ne bis in idem"); case 374/87, Orkem [1989], no. 28 ff. (for the principle "nemo tenetur se ipsum accusare").

[46] See on legal certainty as a general principle of Union law the overview and analysis of Juha Raitio, in: Ulf Bernitz; Joakim Nergelius; Cecilia Cardner; Xavier Groussot (editors): General Principles of EC Law in a Pro-cess of Development, 2008, p. 47 ff. See on the principle of legal certainty and the protection of legitimate expectations Delphine Dero-Bugny, in: Jean-Bernard Auby; Jacqueline Dutheil de la Rochère (note 12), p. 651 ff.

[47] Cf. ECJ, case C-293/04, Beemsterboer [2006], no. 24 f.

[48] ECJ, case C-63/93, Duff [1996], no. 20; case C-199/03, Ireland v. Commission [2005], no. 69.

[49] ECJ, case C-158/06, Stichting ROM-projecten [2007], no. 25 with further references.

[50] ECJ, case C-158/06, Stichting ROM-projecten [2007], no. 26; case C-94/05, Emsland-Stärke [2006], no. 43; case C-143/93, van Es [1996], no. 27 with further references.

[51] Cf. ECJ, case 85/76, Hoffmann-La Roche [1979], no. 130.

[52] See, for example, ECJ, case 21/81, Bout [1982], no. 13; case C-293/04, Beemsterboer [2006], no. 24.

[53] Cf. Cordula Stumpf (note 37), art. 6 EUV [= FEU Treaty], no. 9 with extensive references; Herwig C.H. Hofmann, in: Catherine Barnard; Steve Peers (editors): European Union Law, 2014, p. 211 with further references.

[54] Cf. ECJ, case C-496/08 P, Serrano [2010], no. 84 with further references.

[55] Cf. Herwig C.H. Hofmann (note 53), p. 212.

[56] Cf. ECJ, case C-255/90, Burban [1992], no. 7, 12; joint cases 33 and 75/79, Kuhner [1980], no. 23 ff. In different judgements the Court uses both the terms "proper" and "good" administration.

[57] See on the right to good administration, with a critical approach, Margrét Vala Kristjánsdóttir: Good Administration as a Fundamental Right, Icelandic Review of Politics and Administration, vol. 9 (2013), issue 1, p. 237 ff. (see in particular p. 247, 252), www.irpa.is/article/view/921.

[58] ECJ, case C-269/90, Technische Universität München [1991], no. 14.

[59] Cf. ECJ, case C-282/95 P, Guérin automobiles [1997], no. 37 (here: concerning decisions about complaints in the field of competition law); joint cases 238/99 P, 244/99 P and others [2002], no. 166 ff.

[60] Herwig C.H. Hofmann (note 55), p. 214 with further references.

[61] Cf. ECJ, case C-32/95 P, Listretal [1996], no. 42 with further references; ECJ, case 115/80, Demont v. Commission [1981], no. 10.

[62] See already ECJ, case 32/62, Alvis [1963]; case 85/76, Hoffmann-La Roche [1979], no. 9.

[63] ECJ, case 322/81, Michelin [1983], no. 7.

[64] ECJ, joint cases 46/87 and 227/88, Hoechst [1989], no. 15.

[65] ECJ, case 17/74, Transocean Marine Paint [1974], no. 15.

[66] Cf. Herweg C.H. Hofmann (note 5), p. 215 with further references.

[67] ECJ, case C-349/07, Sopropé [2008], no. 37.

[68] Cf. ECJ, case C-28/05, Dokter and others [2006], no. 73 ff.

[69] ECJ, case C-301/87, France v. Commission [1990], no. 31.

[70] Cf. ECJ, case 85/76, Hoffmann-La Roche [1979], no. 15.

[71] Cf. ECJ, case C-51/92 P, Hercules Chemicals [1999], no. 76.

[72] ECJ, case 53/85, AKZO Chemie [1986], no. 28.

[73] Cf. ECJ, case 53/85, AKZO Chemie [1986], no. 24 ff.

[74] See on this problem ECJ, case C-49/88, Al Jubail Ferlitzer [1991], no. 14 ff.; ECJ, case 85/76, Hoffmann-La Roche [1979], no. 14.

[75] Cf. ECJ, case 222/86, Heylens [1987], no. 14 f.

[76] ECJ, case C-155/79, AM & S [1982], no. 18.

[77] See on the dominant criteria of the "effet utile" in the jurisprudence of the European Court of Justice Urška Šadl: The Role of Effet Utile in Preserving the Continuity and Authority of European Union Law. Evidence from the Citation Web of the Pre-accession Case Law of the Court of Justice of the EU, in: European Journal of Legal Studies, vol. 8 (2015), issue 1, p. 18 ff., www.ejls.eu/18/209UK.pdf; Sibylle Seyr: Der effet utile in der Rechtsprechung des Europäischen Gerichtshofs, 2008; Lovro Tomasic: Effet utile: Die Relativität teleologischer Argumente im Unionsrecht, 2013.

[78] ECJ, case C-217/88, vin de table [1990], no. 24 ff.

[79] ECJ, case C-213/89, Factortame [1990], no. 18 ff.

[80] ECJ, joint cases C-143/88 and others, Zuckerfabrik Süderdithmarschen [1991], no. 18 ff. The Court required that the question of the validity of the legal act will be referred for a preliminary ruling to the Court, that the applicant is threatened with serious and irreparable damage and that the interest of the Community that its acts have full effect is duly taken into account.

[81] Cf. Rudolf Streinz, Europarecht, 10th edition 2016, no. 458.

[82] ECJ, joint cases C-6/90 and 9/90, Francovich [1991], no. 31 ff.

[83] ECJ, case C-392/93, British Teleommunications [1996], no. 40 ff.

[84] ECJ, joint cases C-46/93 and 48/93, Brasserie du Pêcheur/Factortame [1996], no. 16 ff.

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[87] See for an introduction Agnė Vaitkevičiūtė, Member States Liability in Damages for the Breach of European Union Law - Legal Basis and Conditions for Liability, in: Jurisprudencija/Jurisprudence 2011, no. 18, www.mruni.eu/en/mokslo_darbai/jurisprudencija/archyvas/dwn.php?id=276579.

[88] ECJ, joint cases C-46/93 and 48/93, Brasserie du Pêcheur/Factortame [1996], no. 32, 71 ff.

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Prezentat: 23 ianuarie 2017.

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